REMARKS

The Examiner is thanked for his courtesy in acknowledging the filing of the Request for Continued Examination and the Preliminary Amendment of January 8, 2008.

In paragraph 3 of the Office Action, the Examiner objected to claims 25-36, 38-46 and 49 based on the uses of the term "will will" in claim 25. This error has been corrected by this Amendment and it is requested that this ground of rejection be withdrawn.

In paragraph 4 of the Office Action, Claims 25-27, 30-36, 38, 45-47, 49 and 50 were rejected under 35 U.S.C.§103(a) as being unpatentable over Goebel in view of Malhotra or Ito and optionally the admitted prior art (specification, page 4, lines 21-25.

Reconsideration is requested.

Goebel discloses labels for gluing on articles which may be made of paper or plastics films. The labels are provided with a hydrophilic carboxy group containing polymer. Example 3 of this patent describes a plastic foil (film) of PVC as a label substrate and mentions at col.1, line 62 that aqueous adhesive may be used. There are eight examples in Goebel and all examples except Example 3 are only concerned with papers labels. No test data was provided by Goebel to demonstrate if or how his PVC foil could be used to label a container. In addition Goebel did not mention of the use of a stack and feed or gripper type of label application device.

Example 3 of Goebel has been repeated and the results are presented in the Declaration of Leslie Fernandez that is of record in U.S. 6,663,746. That Declaration provides data that shows that label of Example 3 will not dry and the treated surface remains sticky like cellophane tape so that those individual labels will stick to one another and cannot

be used in a labeling machine where they are stacked one upon another. The amendatory language of claims 25, 47 and 50 points out that the claimed process uses a patch label that will readily feed from a label magazine or gripper. In addition claim 25 recites the direct application of an adhesive to the polymer label and does include the requirement of claim 26 that a hydrophilic layer be applied before the water based adhesive is applied. This language excludes a label as made in Example 3 of Goebel from the claims and there is nothing in Goebel that gives any motivation as to how to modify the surface of the PVC label of Example 3 so that the labels do not stick to one another.

The density of the PVC film is not set forth in Goebel and nothing in Goebel suggests the use of a microvoided patch label that will allow a water based adhesive to migrate into the microvoided polymeric label.

The Malholtra patent mentions a filled polypropylene with microvoids that is used to make printable pressure laminated labels that are applied with a pressure sensitive adhesive. At col. 5, lines 44-60, it is clear that pressure sensitive adhesives are required by the Malholtra patent. The pressure sensitive ***polypropylene*** label of Malholtra does not suggest any modification of the hydrophilic coated ***PVC*** label of Goebel. Malholtra uses a pressure sensitive adhesive while Goebel suggests a water based adhesive. Goebel would not use the microvoided label of Malholtra for a non-pressure sensitive label application and thus there is no suggestion in Goebel to modify his process to include a microvoided polymer. It should be kept in mind that Goebel, the primary reference, is dated in 1965 while Malholtra is dated in 1999. It is also noteworthy that in selecting the Malholtra reference, the recitation in claims 25, 47 and 50 of the present application as well as the claims dependent on these claims, that the patch label will readily feed from a label machine or gripper, must be ignored in combining Goebel and Malholtra, because labels with a pressure sensitive labels cannot be applied from

a stack and feed labeler or gripper as they would stick to one another. It is not proper to ignore the plain teachings of the prior art when making a determination of obviousness.

The Ito patent only discloses a voided material that can be used for labeling and there is no reason to combine this patent with Goebel because if the voided film is used in place of the film and paper of Goebel the labels would not require the treatment taught by that patent. There is no mention in Ito of what type of adhesive could or should be used if the product is used to make labels.

None of the cited references address the problem solved by the present invention which is the labeling of plastic, glass or metal containers with a microvoided polymer using a water based adhesive. There was no suggestion in Ito that the voided property could be utilized to manage the water in a water based adhesive when the microvoided film was used a labeling material.

The admitted prior art at page 4, lines 21-25 of the specification was concerned with hot melt technology as noted at page 4, line 12. The fact that hot melt adhesives have been used as label adhesives for polymeric labels provides no teaching or suggestion as to how to use a water based adhesive to fasten a polymeric label to a glass, plastic or metal container. The present specification at page 5, lines 6-35 explains why a water based adhesive does not work with a polymer label where the water based adhesive is applied to a ordinary polymer film: there is no place for the water to go and the label "swims" off the container. For these reasons, it is requested that this ground of rejection be withdrawn.

In paragraph 5 of the Office Action, Claims 28, 29, 43 and 44 were rejected under 35 U.S.C.§103(a) as being unpatentable over Goebel Malholtra or Ito further in view of Jannusch and optioanly the admitted state of the art.

Reconsideration is requested.

Goebel, Maholtra and Ito as well as the admitted state of the art have been distinguished from the claimed

invention above. Claims 28, 29, 43 and 44 point outthat a cross-linking catalyst is used which is not used by the primary references. The Jannusch patent, at col. 8, line 38, mentioned polystyrene as the only example of a plastic. No mention was made of the use of polypropylene.

Jannusch does not mention the use of any foamed plastic substrate as a label and makes no reference to the use of a heat shrinking technique in connection with the use of the Jannusch water based adhesive. Jannusch does not mention any type of a microvoided or foam label. Moreover, Jannusch is silent as to the use of any label substrate which allows water to migrate into the label.

The Jannusch patent is limited to a labeling system which must use a caustic sensitive labeling adhesive that contains an active metal such as aluminum. The metal component is added to make the adhesive debonding in the presence of a strong base. The labels that are disclosed in Example XIII, are paper and the only containers that are actually labeled are glass containers. There is no disclosure in Jannusch of any polymeric label having a density of less than 0.9.

Jannusch is defective as a reference because it lacks a teaching of anything that would suggest or make obvious the combination of the teachings of that reference with Goebel. The deficiency in the Jannusch patent is that patent is only concerned with the use of an adhesive which contains an active metal that functions to make the adhesive debonding in the presence of a strong base. The labels that are disclosed in Jannusch, in Example XIII, are paper and the plastic labels that are mentioned are not disclosed as having being microvoided.

For these reasons, it is requested that this ground of rejection be withdrawn.

In paragraph 6 of the Office Action, claims 39-42 were rejected under 35 U.S.C.§103(a) as being unpatentable over Goebel, Malholtra, Ito and the admitted prior art further in view of Kelly.

Reconsideration is requested.

Goebel, Ito and the state of the art have been distinguished from the claimed invention above.

The Kelly patent is limited to a disclosure of the use of slip aids in combination with labels that are not made of low density polymers. Nothing in Kelly teaches how to apply a microvoided polymer label to a container. For these reasons, it is requested that this ground of rejection be withdrawn.

The Examiner has urged that the Declaration of Leslie Fernandez did not compare the closet prior art because it did not compare the closest prior art i.e. DE 1569879 in view of Ito. While DE15698790 has been withdrawn, Example 3 in that patent is the same as Example 3 in Goebel.

It is not seen how the applicant can be required to test a hypothetical composition that can only be made by selecting materials from two references that can only be combined as a result of the applicants disclosure. The applicant was the one who first used a water based adhesive on a microvoided label. Any testing of the prior must be directed to the state of the art before the applicant made what is conceded to be a novel contribution to the art or the test will merely be a demonstration of the applicants invention. It is requested that the Examiner reconsider the Declaration of Leslie Fernandez and withdraw the rejections of record.

An early and favorable action is earnestly solicited.

Respectfully submitted,

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